



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

November 16, 2022

Re: FOIA Request NLRB-2023-000284

Dear Michael Pellegrini:

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on November 4, 2022, in which you seek all documents (incl., the motions to intervene, motions, response to motions as well as orders) between October 17, 2022, and November 3, 2022, in *ILWU and ILWU Local 19 (SSA Marine and Pacific Maritime Association)*, Case No. 19-CD-303964.

We acknowledged your request on November 4, 2022.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency's electronic casehandling system, NxGen, I have determined that the requested case is related to another case pending in the Agency's Region 19 office, and therefore, certain records in the requested case and in the related cases, are exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). The related case that remains open and under investigation before the Agency is *IAMAW District Lodge No. 160 (SSA Terminals, LLC)*, Case No. 19-CD-303801. Exemption 7(A) allows an agency to withhold records included in an open investigatory file, or related to an open investigatory file, where disclosure could reasonably be expected to interfere with enforcement proceedings. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978); *New England Med. Ctr. Hosp. v. NLRB*, 548 F.2d 377, 385-86 (1st Cir. 1976). Therefore, given the open status of Case 19-CD-303801, which is related to the requested case, the investigatory records in the requested case file (19-CD-303964) are being withheld in full at this time pursuant to Exemption 7(A).

Your request is granted to the extent that I have attached the formal records in the requested case, which are available to the public pursuant to NLRB FOIA regulations. Upon my review, redactions have been made to portions of these records to protect the privacy interests of individuals named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly

unwarranted invasion of personal privacy, and FOIA Exemption 7©, which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the related case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of the open, related case can be tracked on the Agency website at www.nlr.gov by going to the Cases & Decisions tab, clicking case search, entering the case number of the related case in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/19-CD-303801>.

For the purpose of assessing fees, we have placed you in Category D, the “all other requesters” category, because you do not fall within any of the other fee categories. Consistent with this fee category, you will be assessed charges to recover the reasonable direct costs for searching for the requested records, except that you will not be charged for the first two hours of search. NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(2)(ii)(D). Charges for all categories of requesters are \$9.25 per quarter hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Less than two hours of professional time was expended in searching for the requested material. Accordingly, there is no charge assessed for this request.

You may contact Joseph Mullaney, the Attorney-Advisor who processed your request, at (202) 273-3863 or by email at Joseph.Mullaney@nlrb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

Kristine M. Minami
FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570

Email: FOIAPublicLiaison@nlrb.gov

Telephone: (202) 273-0902

Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services

National Archives and Records Administration

8601 Adelphi Road-OGIS

College Park, Maryland 20740-6001

Email: ogis@nara.gov

Telephone: (202) 741-5770

Toll free: (877) 684-6448

Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt

Chief FOIA Officer

National Labor Relations Board

1015 Half Street, S.E., 4th Floor

Washington, D.C. 20570

Email: DLCFOIAAppeal@nlrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling

FOIA Officer

Attachment: (36 pages)